



CLOSED CASE SUMMARY

ISSUED DATE: JUNE 28, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0448

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	15.180 - Primary Investigations, 15.180-POL-1 Officer Shall Conduct a Thorough and Complete Search for Evidence	Not Sustained - Lawful and Proper (Expedited)
# 2	16.230 - Issuing Tickets and Traffic Warnings 16.230-POL 1. Employees May Use Discretion When Issuing Tickets	Not Sustained - Lawful and Proper (Expedited)
# 3	5.001 - Standards and Duties POL-10. Employees Will Strive to be Professional	Not Sustained - Unfounded (Expedited)
# 4	5.140 - Bias-Free Policing, 5.140-POL-2 Officers Will Not Engage in Bias-Based Policing	Not Sustained - Unfounded (Expedited)

Named Employee #2

Allegation(s):		Director's Findings
# 1	15.180 - Primary Investigations, 15.180-POL-1 Officer Shall Conduct a Thorough and Complete Search for Evidence	Not Sustained - Lawful and Proper (Expedited)
# 2	5.001 - Standards and Duties POL-10. Employees Will Strive to be Professional	Not Sustained - Unfounded (Expedited)

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

Named Employee #1 (NE#1) and Named Employee #2 (NE#2) responded to a two-car collision. Community Member #1's (CM#1) vehicle struck the Complainant's vehicle from behind. The Complainant alleged the Named Employees failed to investigate CM#1 for DUI, including failing to obtain a warrant for CM#1's blood. The Complainant also alleged that NE#1 and NE#2 were intimidating and disrespectful. Last, the Complainant alleged that NE#1 and NE#2 engaged in bias-based policing by siding with CM#1 based on his race.

ADMINISTRATIVE NOTE:

This case was approved for Expedited Investigation. That means OPA, with the Office of Inspector General's agreement, believed it could reach and issue recommended findings based on its intake investigation without interviewing the involved employees. As such, OPA did not interview the involved employees in this case.



During its investigation, OPA noted NE#2's failure to screen the Complainant's bias allegations as required by policy. That concern was forwarded to NE#2's chain of command for supervisor action.

SUMMARY OF INVESTIGATION:

A. OPA Complaint and OPA Complainant Interview

OPA interviewed the Complainant about his complaint. He said he slowly drove on Aurora Avenue North when another vehicle struck him from behind. The Complainant said an unidentified witness told him that CM#1—who hit the Complainant—was intoxicated. The Complainant said an officer accused him of causing the collision by making an illegal U-turn onto southbound Aurora Avenue North. The Complainant said that NE#2 arrived and tested him and CM#1 for alcohol consumption, both returning negative results. The Complainant said CM#1 must have ingested narcotics and asked for CM#1 to be tested at a hospital. The Complainant said an officer refused to seek a blood draw.

The Complainant said he attempted to film CM#1 to capture his impairment, but officers blocked his camera. The Complainant also said, despite being the victim, he was wrongly cited for the collision and threatened with having his vehicle towed and arrested for obstruction.

B. Body-Worn Video (BWV)

OPA reviewed relevant BWV from the incident showing:

NE#1 arrived at the collision scene and contacted CM#1, who admitted to driving without a valid driver's license. Seattle Fire Department (SFD) personnel evaluated CM#1, who complained of back pain. CM#1 said that before the collision, the Complainant's vehicle stopped in the middle of the roadway with hazard lights activated, possibly to perform a U-turn. A backing officer interviewed the Complainant, who said a vehicle ahead of him slowed, causing him to slow too. The Complainant said he activated his hazard lights and was struck by CM#1 shortly after that.

NE#1 consulted with NE#2—an acting sergeant—about the investigation. Both concluded that neither party was intoxicated. NE#1 spoke with Witness Employee #1 (WE#1), who interviewed Community Member #2 (CM#2)—an independent witness. CM#2 reportedly saw the Complainant's vehicle stop in the roadway with hazard lights activated with no vehicle in front of him. NE#1 said he would cite the Complainant for stopping in the street.

NE#1 spoke to CM#1 about his driving status, telling him that driving without a license was a crime. NE#1 told the Complainant he would be cited for stopping in the roadway. The Complainant accused CM#1 of intoxication and started filming with a cell phone. The Complainant alleged that NE#1 supported CM#1 because of CM#1's race. The Complainant also alleged that CM#2 and other witnesses supported CM#1 because they were white. The Complainant demanded that he and CM#1 be breathalyzed. NE#1 told the Complainant that CM#1 was also being cited.



NE#2 arrived with a preliminary breath test (PBT).¹ NE#2 showed the Complainant CM#1's results, indicating "0" BAC. The Complainant then demanded that CM#1 be tested for "meth and cocaine." NE#2 explained that he was trained to detect narcotics and that CM#1 showed no impairment. CM#1 agreed to a PBT, also showing "0" BAC. The Complainant insisted CM#1 was intoxicated because he had "sleepy eyes."

After CM#1's vehicle was towed, the Complainant was told he was free to leave since his vehicle was drivable. The Complainant remained at the scene, shouting that there were drugs in CM#1's system. NE#2 offered the Complainant a business card with the case number, but he attempted to push past the line of officers toward the SFD personnel treating CM#1. Several officers stopped him.

The Complainant asked NE#2 to obtain a blood draw warrant for CM#1. NE#2 declined several times, citing a lack of probable cause. The Complainant disagreed and asked NE#2 to review CM#1's criminal history. NE#2 again declined. The Complainant requested to make a complaint about being cited. NE#2 gave him a business card with OPA's phone number.

As the officers left, NE#1 asked the Complainant to return to his car and clear the roadway. The Complainant shouted what sounded like "You cannot stop me" and that he was documenting evidence. A backing officer told the Complainant he was illegally standing in the road. NE#1 again asked the Complainant to return to his car. NE#2 warned that the Complainant was committing pedestrian interference. Nevertheless, the Complainant stayed in the roadway, filming a skid mark. Officers grabbed the Complainant and guided him to his car. NE#2 told the Complainant to leave or be arrested for obstruction. The Complainant eventually left.

C. General Offense (GO) Incident Report

OPA reviewed NE#1's incident report documenting the collision. It was consistent with OPA's BWV observations. NE#1 wrote that he ordered the Complainant to remove his vehicle from the roadway or it would be towed. NE#1 cited the Complainant for causing the collision and later blocking traffic. NE#1 also cited CM#1 for driving without a valid driver's license or proof of financial responsibility.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

15.180 - Primary Investigations, 15.180-POL-1 Officer Shall Conduct a Thorough and Complete Search for Evidence

The Complainant alleged that the Named Employees failed to conduct a thorough and complete primary investigation.

For the reasons at Named Employee #2 - Allegation #2, OPA recommends this allegation be Not Sustained - Lawful and Proper (Expedited)

¹ A PBT is a roadside blood alcohol content (BAC) test commonly used by police officers to help determine if there is probable cause for a DUI arrest.



Recommended Finding: **Not Sustained - Lawful and Proper (Expedited)**

Named Employee #1 - Allegation #2

16.230 - Issuing Tickets and Traffic Warnings 16.230-POL 1. Employees May Use Discretion When Issuing Tickets

The Complainant alleged that NE#1 abused discretion by citing him for obstructing traffic.

Officers may exercise discretion to appropriately warn, cite, or arrest traffic violators to gain compliance with traffic laws and developing driver awareness. SPD Policy 16.230-POL-1. "Employees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment." SPD Policy 5.001-POL-6. Further, "Discretion is proportional to the severity of the crime or public safety issue being addressed." *Id.* Officers must also take enforcement action in reportable non-felony collisions. SPD Policy 15.260-POL-4. A mandatory reportable collision occurs with an injury or "Damage to the property of any person to an apparent extent of \$1,000 or more." SPD Policy 15.260-POL-2.

Here, during NE#1's traffic collision investigation, an independent witness saw the Complainant's vehicle stop in the roadway with its hazard lights activated. CM#1 also reported that the Complainant stopped in the street with his hazard lights activated before the collision. NE#1 cited both parties, citing CM#1 for having no insurance or valid driver's license. NE#1's decision to cite the Complainant for obstructing the roadway was reasonable, given the danger of blocking Aurora Ave North in a section known for its speeds and lack of traffic signals. Last, CM#1 was injured from the collision, and his vehicle was inoperable, requiring a mandatory citation.

Accordingly, OPA recommends this allegation be Not Sustained - Lawful and Proper (Expedited)

Recommended Finding: **Not Sustained - Lawful and Proper (Expedited)**

Named Employee #1 - Allegation #3

5.001 - Standards and Duties POL-10. Employees Will Strive to be Professional

The Complainant alleged that NE#1 intimidated and disrespected him.

SPD employees must "strive to be professional." SPD Policy 5.001-POL-10. Employees must also "avoid unnecessary escalation of events even if those events do not end in reportable uses of force." *Id.* Further, "Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language derogatory, contemptuous, or disrespectful toward any person." *Id.*

NE#1 treated CM#1 fairly and without contempt despite CM#1's antagonistic behavior. OPA did not observe NE#1 using derogatory, contemptuous, or disrespectful language toward any individuals involved in the collision. While NE#1 and NE#2 later threatened to arrest CM#1, they did so because CM#1 remained in the active roadway after being ordered to return to his vehicle and drive away at the call's conclusion. NE#1's threats to arrest CM#1 were ultimately for CM#1's safety and the safety of other motorists after CM#1 refused to comply with previous orders to remove himself from the roadway.



Accordingly, OPA recommends this allegation be Not Sustained - Unfounded (Expedited)

Recommended Finding: **Not Sustained - Unfounded (Expedited)**

Named Employee #1 - Allegation #4

5.140 - Bias-Free Policing, 5.140-POL-2 Officers Will Not Engage in Bias-Based Policing

The Complainant alleged he was treated differently due to CM#1's and CM#2's race.

SPD prohibits biased policing, defined as "the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well other discernible personal characteristics of an individual." SPD Policy 5.140-POL. That includes different treatments based on the race of the subject. *Id.*

OPA found no evidence that NE#1 did or said anything suggesting differential treatment based on a discernable personal characteristic. Instead, NE#1's decision-making was based on available information, not bias. NE#1 decided to cite the Complainant after hearing CM#1's and CM#2's accounts and considering the position of and damage to the Complainant's vehicle.

Accordingly, OPA recommends this allegation be Not Sustained - Unfounded (Expedited)

Recommended Finding: **Not Sustained - Unfounded (Expedited)**

Named Employee #2 - Allegation #1

15.180 - Primary Investigations, 15.180-POL-1 Officer Shall Conduct a Thorough and Complete Search for Evidence

The Complainant alleged that NE#2 failed to obtain a search warrant for CM#1's blood.

Officers must conduct a thorough and complete search for evidence during a primary investigation. SPD Policy 15.180-POL-1. Probable cause exists when the facts and circumstances within an officer's knowledge are sufficient to support a reasonable belief that an offense has been or is being committed. *See State v. Fricks*, 91 Wash.2d 391, 588 P.2d 1328 (1979); *State v. Gluck*, 83 Wash.2d 424, 426-27, 518 P.2d 703 (1974).

During the primary investigation, NE#1 told NE#2 that he did not believe CM#1 was intoxicated. A backing officer concurred. After the Complainant was informed that he would be cited for the collision, he became upset and accused CM#1 of intoxication. A PBT confirmed that CM#1 did not consume alcohol. The Complainant then insisted that CM#1 ingested narcotics. NE#2 explained that CM#1 showed no signs of narcotics use. Nevertheless, the Complainant insisted on a blood draw, noting CM#1's "sleepy eyes." NE#2 explained several times that he would not seek a search warrant when probable cause did not exist.

Accordingly, OPA recommends this allegation be Not Sustained - Lawful and Proper (Expedited)

Recommended Finding: **Not Sustained - Lawful and Proper (Expedited)**

Named Employee #2 - Allegation #2

5.001 - Standards and Duties POL-10. Employees Will Strive to be Professional



For the reasons at Named Employee #1 - Allegation #3, OPA recommends this allegation be Not Sustained – Unfounded (Expedited)

Recommended Finding: **Not Sustained - Unfounded (Expedited)**